IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.71 OF 2007
IN
PETITION NO.348 OF 2004

Mrs. Maria Helen Mascarenhas .... Appellant
Vs.
Philip Salvador Castelino & Ors. .... Respondents

Shri Roque D'Mello for the Appellant.

Sarvasri H.V. Kode i/b S.A. Sawant for
the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: MARCH 08, 2007

ORAL ORDER:

1. Heard. This appeal is filed against the order dated 10-11-2006 passed in Testamentary Petition No.348 of 2004. The learned single Judge has rejected the objection filed by the appellant holding that the objection to the grant of succession certificate was solely on the ground that the appellant is the nominee of the deceased in relation to one of the bank accounts and yet the appellant could not establish the same nor produce any document of nomination.

2. The learned Advocate appearing for the appellant has submitted that the learned single Judge failed to take into consideration the fact that the appellant could not

have produced any documentary proof in support of her claim regarding nomination as the said document was and is in possession of the respondent No.2 herein, and secondly that the learned single Judge could not have proceeded to deal with the objection without prior compliance of the requirement of Rule 406 of the Original side Rules of this Court. It is his contention that the summons as required under the said Rule was not served upon the appellant after she was joined as a party to the proceedings consequent to order dated 11-9-2003 passed in Chamber Summons No.97 of 2003

3. As regards the contention that the document regarding the nomination has been in possession of the respondent No.2 herein and that the learned single Judge ought to have considered that on that count the appellant could not have been expected to produce the same, it is pertinent to note that undisputedly, the appellant had nowhere stated before or at the time of passing of the impugned order that the document in question was in possession of the respondent No.2. In spite of repeated query, the learned Advocate for the appellant has not been able to point out any other material on record which could reveal that the alleged document of nomination had and has been in possession of the respondent No.2. Our attention was sought to be drawn to the copies of the letters dated 26-8-2002 and

another letter dated 27-8-2002. The first one is a letter addressed to the Manager of the respondent No.2 by the respondent whereas the second one is the notice by the Advocate for the respondent and addressed to the Bank. In both these notices, it was stated by the respondent and on behalf of the respondent that the Bank should freeze the account of the deceased. In the second notice it was also stated that the appellant herein was seeking to claim certain amount from the Bank account on the basis of her claim that she was appointed the nominee by the deceased, but such claim was not to be entertained by the Bank and in case the Bank was to release any amount in favour of the appellant on the basis of such claim, it would be entirely at the risk of the Bank and the respondent would not be responsible for the same. With reference to these letters, the learned Advocate has sought to canvass an absolutely untenable argument. It is sought to be contended that the said letters reveal admission about the applicant to be the nominee of the deceased. Perusal of the said letters, however, nowhere disclose any such admission by the respondent. On the contrary, the letters warned the Bank not to get influenced by the claim which was put forth by the appellant that she is the nominee of the deceased.

4. It is undisputed fact that at no point of time the

appellant had issued any notice to the respondent No.2 to produce any such document, either to enable her to produced in the Court or directly to produce before the Court nor any application in that regard was moved before the Court for direction to the respondent No.2 to produce any such document. In the absence of any material disclosing existence of such a document and further possession thereof with the respondent No.2, no fault can be found with the finding arrived at by the learned single Judge about the failure on the part of the appellant to produce such a document and on that count disbelieving the appellant about her claim that she is the nominee of the deceased in relation to the Bank account.

5. The contention as regards non-compliance of Rule 406 is concerned, occasion for exercise of right of filing objection under Rule 406 and to prove the objection, undoubtedly, would arise consequent to service of notice in terms of Rule 397. However, in the case in hand, undisputedly, the appellant himself had taken out Chamber Summons and in terms of the order dated 11-9-2003 passed in Chamber Summons No.97 of 2003, the appellant was joined as a party to the proceedings. Obviously, the object behind Rule 397 was complied with and the appellant had enough opportunity to file the necessary objections in terms of Rule 406 consequent to

the order dated 11-9-2003. In fact, the order was passed for the benefit of the appellant to enable her to place on record whatever objection she might have in the matter. It is pertinent to note that the order dated 11-9-2003 clearly observes that the applicant's claim in the Chamber Summons was that she was the nominee in respect of an account in the bank and though there is no right accrued to the applicant on that count and hence she is not a necessary party, yet she being a proper party, she was to be joined as a party to the proceedings. This was sufficient enough to give notice to the appellant to put forth her say and objections, if any, in terms of Rule 406 before the learned single Judge in the said proceedings and indeed the learned single Judge while passing the impugned order has considered the objections filed by the appellant in her affidavit filed in the proceedings. In case the appellant wanted to produce any document in support of the contention sought to be raised in the affidavit, obviously it was for the appellant to do so and exactly on account of failure of the appellant to produce the necessary evidence in support of her claim of being nominee of the deceased, the impugned order came to be passed. The impugned order clearly records failure of the appellant to produce any document of her claim about the nomination. Obviously therefore, there was sufficient compliance of the provisions of law in the

matter of issuance of notices by the Court to all the parties including the appellant. The appellant having sufficient knowledge and information about the proceedings and she having been already joined as a party to the proceedings, she had enough opportunity to prove her claim of nomination and in that regard she having failed, no fault can be found with the impugned order.

6. In any case, the law on the point of rights and obligation of a nominee is well-settled. The Apex Court in **Smt. Sarbati Devi and another v. Smt. Usha Devi,** reported in AIR 1984 SC 346, while referring to the scope of Section 39 of the Insurance Act, 1938 had clearly held that a person who is appointed as the nominee does not enjoy any beneficial interest in the estate for which he is appointed as the nominee. It was clearly ruled that a mere nomination made under Section 39 of the Insurance Act, 1938 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured and the nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy, and therefore the heirs of the assured can certainly claim the amount in accordance with law of succession

governing them. The said ruling was given after considering various judgments of the various High Courts taking the similar view. It was clearly observed that various High Courts have taken the view that the nominee under Section 39 of the Insurance Act is nothing more than an agent to receive the money under the life insurance policy and that the money remains the property of the assured during his life time and on his death forms part of his estate, subject to the law of succession applicable to him. In that regard, reference was made to the decisions in **Ramballav Dhandhania v. Gangadhar Nathmall** {AIR 1956 Calcutta 257}, **Life Insurance Corporation of India v. United Bank of India Ltd.** {AIR 1970 Calcutta 513}, **D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd., Salem** {AIR 1957 Madras 115}, **Sarojini Amma v. Neelakanta Pillai** {AIR 1961 Kerala 126 (FB)}, **Atmaram Mohanlal Panchal v. Gunavantiben** {AIR 1977 Gujarat 134}, **Malli Dei v. Kanchan Prava Dei** {AIR 1973 Orissa 83} and **Lakshmi Amma v. Saguna Bhagath** {ILR (1973) Karnataka 827}.

7. The Apex Court, further referring to the law on the subject as in force in England categorically observed that the same has been summarised in Halsbury's Laws of England (Fourth Edition), Vol.25, para 579 which reads thus:

> "579. Position of third party - The policy money payable on the death of the assured may be expressed to be payable to a third party and the third party is then prima facie merely the agent for the time being of the legal owner and has his authority to receive the policy money and to give a good discharge; but he generally has no right to sue the insurers in his own name. The question has been raised whether the third party's authority to receive the policy money is terminated by the death of the assured; it seems, however, that unless and until they are otherwise directed by the assured's personal representatives the insurers may pay the money to the third party and get a good discharge from him."

8. Following the said decision, this Court in **Vidya Lachhmandas Khanchandani and another v. Vishin N. Khanchandani and another,** reported in 1999 (3) Mh.L.J. 120, while dealing with the question as to whether a nominee of a National Saving Certificate is entitled for beneficial interest in the amount due thereon on the

death of the holder of the certificate or the said amount would enure for the benefit of the heirs of the deceased-owner held that unless the nomination can be said to amount to a disposition by Will, the amount due on the National Savings Certificates should devolve on the heirs by intestate succession and since the conditions of nomination cannot be equated to the requirements of a Will as held by the Apex Court, the amount due on the said Certificates has to devolve on the heirs of the holder after his death. The nominees, in the circumstances, would be entitled to receive the amount as the trustees of the heirs of the holders and are bound to pay the same to the heirs and the payment to the nominees does not create any beneficial interest in their favour in respect of the said amount.

9. As no other ground of challenge is disclosed in the matter nor is canvassed, the appeal fails and deserves to be dismissed with costs. The appeal is accordingly dismissed with costs.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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